

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Albert Medina,

Petitioner

v.

State of Nevada,

Respondents

Case No.: 2:24-cv-00258-APG-EJY

**Order Dismissing Successive Petition
Without Prejudice for Lack of Jurisdiction
and Denying IFP Application and All
Other Pending Motions**

[ECF Nos. 1, 3, 5, 6]

Petitioner Albert Medina, a *pro se* Nevada prisoner, has filed an amended petition for writ of habeas corpus (ECF No. 6), an application for leave to proceed *in forma pauperis* (IFP (ECF No. 1)), motion for appointment of counsel (ECF No. 3), and a motion to correct illegal sentence (ECF No. 5). I dismiss the petition for lack of jurisdiction, deny the IFP application and all other pending motions, and direct the Clerk of the Court to close this case.

Background

Medina challenges a 2004 conviction and sentence imposed by the Eighth Judicial District Court for Clark County. *State of Nevada v. Medina*, Case No. 03C189933. The state court entered a judgment of conviction for five counts of sexual assault on a victim 65 years or older, and one count of first-degree kidnapping of a victim 65 years or older. The state court sentenced Medina to six concurrent terms of life plus a consecutive term of life with the possibility of parole after five years for the kidnapping count, with an equal and consecutive term of life without the possibility of parole after five years for the older victim enhancement.

The Nevada Supreme Court affirmed his conviction on appeal. Medina filed a state habeas postconviction petition, which the state court denied. The Nevada Supreme Court affirmed the denial of relief. In July 2009, Medina filed a federal habeas petition in this court,

1 which was denied on the merits. *See Medina v. Williams*, Case No. 2:09-cv-01331-GMN-GWF,
2 ECF No. 49. The Ninth Circuit affirmed on appeal. *Id.* at ECF No. 59.

3 Discussion

4 The current petition is second or successive because a prior federal petition was decided
5 on its merits, Medina attacks the same judgment of conviction, and the claims Medina raises here
6 are based on facts that had occurred by the time of the prior petition. *See Brown v. Muniz*, 889
7 F.3d 661, 667 (9th Cir. 2018) (“[A] federal habeas petition is second or successive if the facts
8 underlying the claim occurred by the time of the initial petition, . . . and if the petition challenges
9 the same state court judgment as the initial petition.”). Under 28 U.S.C. § 2244(b)(3), before a
10 second or successive petition is filed in the federal district court, a petitioner must move in the
11 court of appeals for an order authorizing the district court to consider the petition. A federal
12 district court does not have jurisdiction to entertain a successive petition absent such permission.
13 *Brown*, 889 F.3d at 667.

14 Medina has made no allegation or showing that he has received authorization from the
15 the Ninth Circuit to file this second or successive petition, nor do the records of the Ninth Circuit
16 reflect that he has sought to obtain any such authorization. This second or successive petition
17 must therefore be dismissed for lack of jurisdiction.

18 Conclusion

19 I THEREFORE ORDER:

- 20 1. The amended petition (ECF No. 6) is dismissed without prejudice for lack of
21 jurisdiction.
- 22 2. The application for leave to proceed *in forma pauperis* (ECF No. 1) is denied as
23 moot.

- 1 3. The motion for appointment of counsel (ECF No. 3) and motion to correct illegal
- 2 sentence (ECF No. 5) are denied as moot.
- 3 4. Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, that the Clerk will
- 4 make informal electronic service upon Respondents by adding Nevada Attorney
- 5 General Aaron D. Ford as counsel for Respondents and directing a notice of
- 6 electronic filing of this order to his office. No response is required from Respondents
- 7 other than to respond to any orders of a reviewing court.
- 8 5. The Clerk of the Court is directed to enter judgment accordingly and close this case.
- 9 6. A certificate of appealability is denied because jurists of reason would not find
- 10 debatable whether the Court is correct in dismissing this action.

11 DATED this 7th day of March, 2024.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE